



BILLING CODE 4333-15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1-ES-2022-N047; FXES11140100000–223–FF01E00000]

Draft Safe Harbor Agreement; Draft Environmental Assessment for the Marbled Murrelet in Washington

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from Weyerhaeuser Timber Holdings, Inc., for an enhancement of survival permit (permit) pursuant to the Endangered Species Act. If granted, the permit would authorize incidental take of the marbled murrelet, associated with forest management actions on private lands. The application includes a draft safe harbor agreement (SHA), which describes the actions the applicant will take to achieve a net conservation benefit for the marbled murrelet within its range on enrolled lands in Washington. We announce the availability of a draft environmental assessment addressing the SHA and permit application. We invite comments from all interested parties.

DATES: To ensure consideration, please submit written comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may view or download copies of the draft SHA and draft EA and obtain additional information on the internet at <https://www.fws.gov/office/washington-fish-and-wildlife>. To request further information or submit written comments, please use

one of the following methods, and note that your information request or comments are in reference to “Weyerhaeuser SHA in Washington.”

- *Email: wfwocomments@fws.gov.*
- *U.S. Mail: Public Comments Processing, Attn: FWS-R1-ES-2022-N047; U.S. Fish and Wildlife Service; Washington Fish and Wildlife Office, 510 Desmond Drive SE, Suite 102; Lacey, WA 98503.*

FOR FURTHER INFORMATION CONTACT: Vince Harke, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office (see **ADDRESSES**); telephone: 360-753-9440; email: *vince_harke@fws.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service (FWS) received an application from Weyerhaeuser Timber Holdings, Inc. (applicant), for an enhancement of survival permit (permit) pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The application requests a 34-year permit that would authorize take of the threatened marbled murrelet (*Brachyramphus marmoratus*), incidental to otherwise lawful timber harvest related activities within the range of the species on the enrolled lands. The application includes a safe harbor agreement (SHA), which describes the actions the applicant will take to achieve a net conservation benefit for the covered species. FWS also announces the availability of a draft environmental assessment (EA) addressing the effects of the

permit application and SHA on the human environment, in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). We invite comments from all interested parties on the permit application, including the SHA and draft EA.

Background

Section 9 of the ESA prohibits “take” of fish and wildlife species listed as endangered or threatened. Under the ESA, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term “harm,” as defined in our regulations, includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity (50 CFR 17.3).

Under an SHA, participating landowners undertake management activities on their property to enhance, restore, or maintain habitat conditions for species listed under the ESA to an extent that is likely to result in a net conservation benefit for the covered listed species. An SHA and its associated permit issued to participating landowners pursuant to section 10(a)(1)(A) of the ESA encourage private and other non-Federal property owners to implement conservation actions for federally listed species by assuring the participating landowners that they will not be subjected to increased property-use restrictions as a result of their efforts to either attract listed species to their property or to increase the numbers or distribution of listed species already on their property.

The SHA and its associated permit allow the property owner to alter or modify the

enrolled property back to agreed-upon pre-permit baseline conditions at the end of the term of the permit, even if such alteration or modification results in the incidental take of a covered species. The baseline conditions must reflect known biological and habitat characteristics that support existing levels of use of the enrolled property by species covered in the SHA. The authorization to take listed species is contingent on the property owner complying with obligations in the SHA and the terms and conditions of the permit. The SHA's net conservation benefits must be sufficient to contribute, either directly or indirectly, to the recovery of the covered species. Enrolled landowners may lawfully use their enrolled property during the term of the permit and may incidentally take the listed species covered by the permit in accordance with its terms and conditions.

Permit application requirements and issuance criteria for enhancement of survival permits for SHAs are found at 50 CFR 17.22(c). More information about the Service's Safe Harbor Policy (64 FR 32717, June 17, 1999) and the Safe Harbor Regulations (68 FR 53320, September 10, 2003; and 69 FR 24084, May 3, 2004) is available at <https://www.fws.gov/service/safe-harbor-agreements>.

Proposed Action

The proposed SHA is for forest management activities associated with over 652,000 acres of privately owned lands located in 8 counties in western Washington State. The SHA would allow the applicant to maintain or increase potential nesting habitat for marbled murrelet on enrolled lands without incurring additional ESA restrictions. Under the proposed SHA, the applicant would continue to manage their forest lands for timber production in compliance with the Washington Forest Practices Rules (WAC Title 222), which include provisions for the protection of forested buffers

along rivers, streams, wetlands, and unstable slopes. Because the forested buffers are largely deferred from timber harvesting, the buffers represent areas that could support potential marbled murrelet nesting habitat now or in the future. Under the SHA, the applicant will continue to protect all previously documented occupied marbled murrelet habitat on their lands. Additionally, the applicant will defer harvest in certain areas identified as potential marbled murrelet nesting habitat on enrolled lands for the term of the SHA. By volunteering to defer timber harvest in certain areas, the proposed SHA protects more forest habitat on their lands than would otherwise be protected under existing forest practices rules. The permit would provide incidental take authorization for marbled murrelets and long-term assurances for the limited timber harvest allowed within forest buffers protected under the Washington Forest Practices Rules, and for forest management activities located within 300 feet of forest buffers. The term of the SHA is 34 years (until 2056) and coincides with the term of the State of Washington's Forest Practices Habitat Conservation Plan (2006) for federally threatened or endangered salmon and other aquatic species.

National Environmental Policy Act Compliance

The proposed issuance of a permit is a Federal action that triggers the need for compliance with the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*). Pursuant to the requirements of NEPA, we have prepared a draft environmental assessment (EA) to analyze the environmental impacts of a reasonable range of alternatives to the proposed permitting action.

Alternatives analyzed in the draft EA include a no-action alternative, the proposed action, and an additional action alternative. Under the no-action alternative, the proposed

Federal action of issuing the permit would not proceed. The proposed action is implementation of the SHA and issuance of the requested permit, as described above and in more detail in the SHA. In the additional action alternative, an SHA similar to the proposed action would be developed and implemented with additional set-asides, including conservation activities other than or in addition to those outlined in the proposed action.

Public Comments

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We specifically request information, views, and opinions from interested parties regarding our proposed Federal action, including on the adequacy of the SHA pursuant to the requirements for permits at 50 CFR parts 13 and 17 and the adequacy of the draft EA pursuant to the requirements of NEPA.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information in your comments, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Next Steps

After public review and completion of the EA, we will determine whether the proposed action warrants a finding of no significant impact or whether an environmental

impact statement should be prepared pursuant to NEPA. We will evaluate the permit application, associated documents, and any comments received to determine if the permit application meets the requirements of section 10(a)(1)(A) of the ESA. We will also evaluate whether issuance of the requested permit complies with section 7(a)(2) of the ESA by conducting an intra-Service consultation. The final NEPA and permit determinations will not be completed until after the end of the 30-day comment period; in making these determinations, we will fully consider all substantive comments received during the comment period. If we determine that all requirements are met, we will issue a permit for take of the covered species, incidental to otherwise lawful covered activities.

Authority

We provide this notice in accordance with the requirements of the ESA and NEPA and their implementing regulations (50 CFR 17.32 and 40 CFR 1506.6, respectively).

Nanette Seto,

Acting Deputy Regional Director,

Pacific Region,

U.S. Fish and Wildlife Service.

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